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APR 16 2001

In the Matter of

Computer III Further Remand Proceedings
Bell Operating Company
Provision of Enhanced Services

1998 Biennial Regulatory Review —
Review of *Computer III* and ONA
Safeguards and Requirements

CC Docket No. 95-20

CC Docket No. 98-10

COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

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Summary

GSA responds to the Commission's request to update the record on issues concerning access to the switched network by ISPs and the need for structural safeguards to equalize opportunities for provision of enhanced telecommunications services by all carriers.

GSA explains that ISPs are dependent on incumbent LECs because they are the only carriers with ubiquitous access facilities. Competitors still provide services primarily through resale or by employing UNEs obtained from incumbent LECs. There is very little facilities-based competition in most areas in spite of the steps that the Commission has taken to implement the goals of the Telecommunications Act.

For efficient access, ISPs should be allowed to obtain UNEs directly from incumbent LECs and to use those facilities to serve their own subscribers. GSA notes that this procedure would reduce costs, expand the number of service alternatives, and increase competition in the broadband industry.

GSA urges the Commission to continue structural separations requirements on major incumbent LECs providing enhanced services. Competition is still not sufficient to depend on non-structural safeguards to provide a level playing field between incumbent carriers and other firms. Basically, structural separations is necessary to ensure that the revenues and costs for unregulated information services can be distinguished from the revenues and costs for the carrier's regulated services.

Finally, GSA explains that the Commission should develop procedures to provide entities other than carriers with efficient access to unbundled network features and functionalities. Extending the availability of UNEs to end users should not pose any significant costs on the incumbent LECs because they are now required to provide UNEs to other carriers.

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**COMMENTS
of the
GENERAL SERVICES ADMINISTRATION**

The General Services Administration (“GSA”) submits these Comments on behalf of the customer interests of all Federal Executive Agencies (“FEAs”) in response to the Public Notice in CC Docket Nos. 95–20 and 98–10 (“Notice”) released on March 7, 2001. The Notice seeks comments and replies on issues concerning access to the switched network by information service providers (“ISPs”) and the need for structural safeguards to equalize opportunities for provision of enhanced telecommunications services by all carriers.

I. INTRODUCTION

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. From their perspective as end users, the FEAs have consistently

supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

In the *Computer III* proceedings, the Commission established safeguards for the provision of enhanced services by the Bell Operating Companies ("BOCs").¹ On January 30, 1998, the Commission issued a Further Notice of Proposed Rulemaking ("Further Notice") to obtain comments on the relationship between the rules governing Open Network Architecture ("ONA") established in the *Computer III* regime and competitive developments observed since passage of the Telecommunications Act.²

The Further Notice asked parties to address questions including (1) whether developments resulting from the Telecommunications Act alleviate concerns with unbundling requirements; (2) whether ONA has been effective in providing access to basic telecommunications services to ISPs; and (3) whether the Commission should extend to ISPs some or all unbundling rights available under section 251 of the Telecommunications Act.³ Through the current Notice, the Commission asks parties to update and refresh the record on these issues.⁴

GSA submitted Comments and Reply Comments in response to the Further Notice.⁵ In those submissions, GSA explained that current regulatory, technological, and marketplace conditions justify structural separations for the activities of the BOCs

¹ *In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Review – Review of Computer III and ONA Safeguards and Requirements* ("Computer III"), Further Notice of Proposed Rulemaking, 143 FCC Rcd 4040 (1999).

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.* ("Telecommunications Act").

³ Notice, p. 1.

⁴ *Id.*, pp. 1-2.

⁵ Comments of GSA, March 27, 1998; and Reply Comments of GSA, April 23, 1998.

in providing information services.⁶ Consequently, GSA urged the Commission to continue structural separations as long as the BOCs have substantial market power.⁷ Also, GSA urged the Commission to conclude that ISPs and other end users should have access to unbundled network elements (“UNEs”).⁸

II. INFORMATION SERVICE PROVIDERS NEED EFFICIENT ACCESS TO FACILITIES OF INCUMBENT CARRIERS.

The Internet has become an indispensable vehicle for Federal agencies in maintaining efficient contact with the public. Also, the Internet serves as an invaluable research tool for agency employees in formulating and executing myriad policies and laws. Cost-effective access to the telecommunications network by a wide range of ISPs is necessary to provide these capabilities to the FEAs and the public.

ISPs are heavily dependent on incumbent local exchange carriers (“LECs”) because they are the only carriers with ubiquitous access facilities. On June 30, 2000, the most recent date for which comprehensive data are available, incumbent LECs provided services to over 93.3 percent of the 192 million access lines.⁹ Competitive LECs provided only 6.7 percent of the services. Moreover, of the small percentage provided by competitors, only about one-third were provided over the competitors’ own facilities, and the remainder by reselling incumbent LECs’ services or employing their UNEs.¹⁰

⁶ *Id.*, Comments of GSA, pp. 3-5; and Reply Comments of GSA, pp. 2-5.

⁷ *Id.*, Reply Comments of GSA, pp. 5-6.

⁸ *Id.*, pp. 10-13.

⁹ Industry Analysis Division, *Local Competition Status as of June 30, 2000*, issued December 2000, Tables 1-3.

¹⁰ *Id.*

Three years ago, a number of ISPs stated in their comments that access to UNEs would help them to provide better services to their own customers.¹¹ The comments demonstrated that smaller ISPs lacking the resources to provide a broad range of services themselves would benefit most significantly.¹² Consequently, provisions for ISPs to have UNE access would also have the advantage of extending competition in that industry.

The broadband industry is often characterized as highly fragmented. However, data from the Commission's most recent Report 706 shows that there are only 106 providers of broadband services collectively throughout the country, most of whom serve only limited regions.¹³ This total includes firms employing digital subscriber line ("DSL"), coaxial cable, wireline, satellite, and fixed wireless technologies. UNE access would provide attractive options for additional ISPs to participate in the broadband markets.

Moreover, ISPs have explained that even where competitive choices are available, consumers will not enjoy the benefits of high bandwidth access simply by conferring the rights of access to UNEs to local exchange carriers competing with BOCs.¹⁴ While competitive LECs are an alternative source in some places, these firms are not currently serving most smaller communities and rural areas.

In its most recent market research report entitled "Broadband Access: Technologies, Services and Providers," the information service Global Technologies states:

¹¹ See Reply Comments of GSA, April 23, 1998, p. 12.

¹² *Id.*

¹³ Industry Analysis Division, High-Speed Services for Internet Access: Subscribership as of June 30, 2000, October 2000, Table 4.

¹⁴ Reply Comments of GSA, April 23, 1998, citing Comments of Helicon Online, March 27, 1998, p. 2.

One of the most significant inhibitors preventing widespread deployment of advanced e-business applications between large and small locations is the lack of affordable high-speed access. In the United States, broadband access has been developed and deployed in a series of fits and starts. A number of potential competing technologies and providers exist. . . . However, the apparent wealth of choice belies a void in service availability and maturity.¹⁵

Also, the report states that clients outside the 60 largest metropolitan areas will usually find few alternative providers.¹⁶

In addition, most ISPs have employed access pricing arrangements tailored to meet the needs of households and smaller businesses. With access to UNEs, ISPs would be more likely to structure service level agreements ("SLAs") with their customers. These agreements are important for larger business users, including government agencies, that attempt to obtain telecommunications services through contracts developed as a result of a competitive bidding process.

In short, ISPs have the physical plant, technical knowledge, and consumer contacts necessary to bring the benefits of UNE access to a wide spectrum of end users. The Commission should take steps to help ensure that end users benefit most from these capabilities.

III. THE COMMISSION SHOULD CONTINUE STRUCTURAL SEPARATIONS BECAUSE INCUMBENT LECs DOMINATE LOCAL MARKETS.

In the *Computer III* proceedings, the Commission addressed organizational and accounting requirements for the provision of enhanced services by BOCs.¹⁷ These

¹⁵ http://www.telcom-info.com/english/gg5894_broadband_access.html.

¹⁶ *Id.*

¹⁷ *In the Matter of Computer II Further Remand Proceedings – Bell Operating Company Provision of Enhanced Services*, CC Docket No. 95-20; and *1998 Biennial Regulatory Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 98-10.

services extend the capabilities of the switched network by providing voice mail, e-mail, voice store-and-forward, data processing, access to on-line databases, and other services for businesses, government agencies, and private individuals. Initially, enhanced services were offered principally by incumbent LECs. However, specialized firms called enhanced service providers ("ESPs") or ISPs have become significant participants in these markets.

The core regulatory issue concerning provision of enhanced services is whether the Bell operating companies must provide enhanced services to consumers through structurally separate organizations in order to prevent them from exploiting their unique positions as providers of local telephone services to the majority of telephone users. The Commission adopted a requirement for structural safeguards to ensure an open network with firms competing against BOCs on an equitable basis.¹⁸

In numerous comments to the Commission over the last ten years, GSA has repeatedly endorsed the requirement for structural separations.¹⁹ In those submissions, GSA explained that competition is still not sufficient to depend solely on non-structural safeguards. Information services and basic telephone services are interrelated from operational and marketing viewpoints. Consequently, structural separations are necessary to ensure that the revenues and costs for unregulated information services can be distinguished from the revenues and costs for the carrier's regulated telecommunications services.

¹⁸ Notice, p. 1.

¹⁹ *In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, CC Docket No. 90-623, Comments of GSA, March 8, 1991, p. 2; *Id.*, Reply Comments of GSA, April 8, 1991, pp. 15-23; *In the Matter of Computer III Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Comments of GSA, March 27, 1998, pp. 2-6; and *Id.*, Reply Comments of GSA, April 23, 1998, pp. 5-10.

In recent Reply Comments, GSA explained that nearly all parties except the BOCs themselves acknowledge the need to maintain structural safeguards.²⁰ For example, MCI Telecommunications states:

- BOCs do not demonstrate that structural separations will impair their own provision of information services.²¹
- Incumbent carriers do not show that structural separations will abridge benefits to the public in any way.²²
- Elimination of structural separations is not required for consumers to enjoy the advantages of “one-stop shopping” for local exchange and information offerings.²³

Moreover, carriers explain that structural separations avoids the need for complex and arbitrary cost allocations, and thus reduces opportunities for cross-subsidy.²⁴ In summary, comments show that there have not been sufficient changes in the level of competition to reverse the finding that structural separations is necessary to maintain a level playing field between incumbent carriers and other firms.

America Online (“AOL”) provides local dial-up access to Internet services in 700 cities throughout the U.S, and thus depends heavily on incumbent LECs.²⁵ In its comments, AOL described the need for safeguards to ensure cost-effective access:

Until there is genuine facilities-based competition, competitive safeguards coupled with vigilant enforcement are necessary to prevent BOC anti-competitive behavior.²⁶

²⁰ Reply Comments of GSA, April 23, 1998, pp. 3-4.

²¹ Comments of MCI Telecommunications Corp. (“MCI”), March 27, 1998, p. 23.

²² *Id.*, p. 31.

²³ *Id.*, p. 41

²⁴ Reply Comments of GSA, April 23, 1998, citing Comments of CompuServe Network Services, March 27, 1998, p. 7.

²⁵ Comments of America Online, March 27, 1998, p. 2.

²⁶ *Id.*, p. 9.

AOL explains that a structurally integrated BOC's capabilities to engage in cost misallocation or improper discrimination are readily apparent.²⁷

Applying AOL's test, the Commission's data shows meager actual facilities-based competition — about one third of 6.7 percent, as noted previously in these Comments. From GSA's perspective, a few percentage points does not qualify as "genuine facilities-based competition." Moreover, concentration in the industry is increasing because of mergers between incumbent LECs and the financial difficulties of competitive LECs. It is likely to be some time before competition reaches the level necessary to abandon structural safeguards.

IV. EXTENDING ACCESS TO END USERS WILL HELP COUNTERBALANCE THE MARKET POWER OF INCUMBENT CARRIERS.

ISPs and other end users responded affirmatively to the Commission's question in the Further Notice on whether it should give ISPs the rights of access to UNEs that are conferred to interconnected carriers by Section 251 of the Telecommunications Act.²⁸ Although there was support for the additional access, the Commission has not considered rules concerning implementation.

In its comments to the Commission, an association of end users explained that access to BOC network functionalities will help to curb the market power of the major carriers.²⁹ Also, the association stated that extending the availability of UNEs to end users should not pose any significant costs on the incumbent local exchange carriers,

²⁷ *Id.*, p. 10.

²⁸ Further Notice, paras. 94-96.

²⁹ Comments of Ad Hoc Telecommunications Users Committee ("Ad Hoc"), March 27, 1998, p. 11.

because these firms are now required by the Telecommunications Act to provide UNEs to other entities.³⁰

In its Further Notice, the Commission postulated that all users, including ISPs, can take advantage of the requirement in the Telecommunications Act for unbundling either by partnering or teaming with competitive LECs or by becoming certified telecommunications carriers themselves.³¹ However, end users explained that this approach is not satisfactory because it would transfer the costs, regulatory obligations, and administrative tasks entailed in becoming a telecommunications carrier to end users.³² Users should not be compelled to become carriers in order to have access to network functionalities that would help to satisfy market needs.

In short, to respond to the Commission's request to refresh the record, GSA believes that none of the pertinent conditions or constraints have changed to reduce the benefits of direct access by end users. Market needs are best identified and met when users are given access to the network comparable to that afforded carriers. Therefore, the Commission should take steps to help ensure that entities other than carriers have efficient access to unbundled network features and functionalities.

³⁰ *Id.*

³¹ Further Notice, paras. 33 and 95.

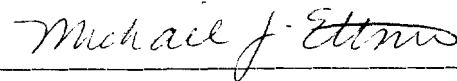
³² Comments of Ad Hoc, March 27, 1998, p. 12.

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Comments.

Respectfully submitted,

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